

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF**

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

75-7014

75-7014

NORMAN A. PLOTKIN,
Appellant,

-against-

WEST SIDE FEDERAL SAVINGS AND
LOAN ASSOCIATION, ALLEGHENY MUTUAL
CASUALTY CO., and THE NEW YORK TIMES CO.,

Appellees,

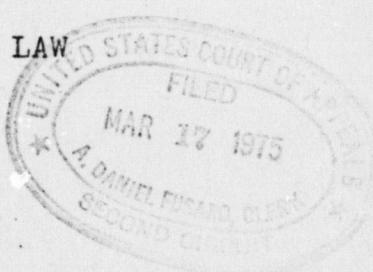
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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
-----x

NORMAN A. PLOTKIN,
Plaintiff,

-against-

WEST SIDE FEDERAL SAVINGS AND
LOAN ASSOCIATION, ALLEGHENY MUTUAL
CASUALTY CO., and THE NEW YORK TIMES CO.,

Defendants.



GENE CRESCENZI
Attorney for Appellant
415 Lexington Avenue
New York, N.Y. 10017
(212) MU 2-1686

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Preliminary Statement

In this action in the Southern District of New York, for injunctive relief and damages appellant seeks to recover his money on deposit in a federally chartered savings and loan association where the passbook and an assignment, since cancelled by him, were unlawfully extorted from him, under ^{actions suggestive of} intolerable duress, by ^{actions suggestive of} a robber baron's dictatorship, under color of law, in New Jersey. The assignee, and co-conspirator, holding this passbook, is a resident of Pennsylvania, giving diversity jurisdiction to the district court. Appellant is denied recovery of his monies in the Southern District. The complaint alleges a conspiracy to seek investors in the Southern District of New York and then to fleece them of their money and property in another state by deprivation of their ^{actions suggestive of} liberty, holding them for ransom, by ^{advertiser as publisher} ^{actions suggestive of} robber barons, under color of law. The New York Times Co. is joined as a co-conspirator, as an ~~advertiser as publisher~~ soliciting these investments for this unlawful purpose, with reckless disregard of its legal obligations in publishing such unlawful solicitations.

The district court dismissed the complaint at an informal conference with no notice of any kind (a telephone call summoned counsel only to a conference) for lack of jurisdiction and failure to state a claim for which relief can be granted.

There were no other proceedings and only the West Side Federal Savings and Loan Association answered the complaint. This answer did not contest the jurisdiction of the district

court. It answered only that the ownerships of petitioner's money was claimed by virtue of appellant's assignment, since cancelled.

Appellant has previously sought procedural redress by a petition for Mandamus in this Court of Appeals, 74-2700, denied without an opinion.

Point I

IS DISMISSAL WITH NO NOTICE, BY
ORAL MOTION, DUE PROCESS?

Rule 7 (b) (1) of the Federal Rules of Civil Procedure, provides:

An application to the court for an order shall be by motion which, unless made during a hearing or trial shall be made in writing, shall set forth with particularity the grounds therefore...

Rule 16 of these rules provide for pre-trial procedure at a conference, but with no provision whatever for an oral motion without notice.

There was clearly no due process in this unauthorized procedure, which quite unfairly benefitted appellees who withheld any notice of their motions.

Point II

IS THERE FEDERAL JURISDICTION UNDER
12 U.S.C. 1464 ON A FEDERALLY CHARTERED
SAVINGS AND LOAN ASSOCIATION?

Chief Justice Marshall, in Osborn v. Bank of the U.S., 9 Wheat 817-828 decided that an institution that was a mere creature of federal law, depends on a law of the United States

and that any suit thereunder arises under the Constitution laws or treaties of the United States.

Point III

DOES THE DISTRICT COURT HAVE EQUITABLE AND OTHER JURISDICTION UNDER 42 U.S.C. 1983 AND OVER CO-CONSPIRATORS UNDER 42 U.S.C. 1985?

The complaint alleges that the wrongs, complained of were done under color of law, and that the wrongdoers did their wrongs in the guise of being officials exercising the power of the state. The cause of action is that officials forced this assignment, since cancelled, for larcenous motive, by deprivation of liberty, and the threat thereof, unlawfully, by ^{in effect,} alleging ownership of property to be a crime.

Those who directly assist a state agency in carrying out unlawful acts become part of these wrongs and subject to the statutory sanctions. Baldwin v. Morgan 251 F 2nd 780, and Burton v. Wilmington, Del. Parking Authority, 815 S.Ct. 856, 365 U.S. 715.

Allegheny Mutual Casualty Co. is directly assisting a state agency, the City of Jersey City, in the wrongs complained of, together with the co-conspirators complained of herein. 42 U.S.C 1983 provides for a suit in equity and for damages for such deprivation, and 42 U.S.C. 1985 provides for an action for damage for conspirators for such deprivation.



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CONCLUSION

THE ORDER AND JUDGMENT OF
DISMISSAL SHOULD BE REVERSED.

Dated: March 17, 1975

Gene Crescenzi
GENE CRESCENZI
Attorney for Appellant
415 Lexington Avenue
New York, N.Y. 10017
(212) MU 2-1686